IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

The State of Rajasthan vs.Heer Singh & Ors .

1.

D.B.Cri. Appeal No.368/1984

Sohan Singh & Anr. vs. State of Rajasthan

2. DB Cri. Appeal No.88/1984

Under Section 378 (3) and u/s 378 (1) Cr.P.C. against the judgment dated 16.02.1984 passed by the Additional Sessions Judge, Sirohi in Sessions Case No. 84/1982.

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Date of Judgment: 01st October, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.JPS.Choudhary, Public Prosecutor.
Mr. Doongar Singh for the accused.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

These two appeals are filed by the State and two accused , being aggrieved by the decision of the court of Addl. Sessions Judge, Sirohi in Sessions Case No.84/1982 dated 16.02.84.

The State has filed the appeal being aggrieved by the acquittal of Ganga Singh and Heer Singh and also conviction of accused Sohan Singh and Shambhu Singh under section 304-II IPC. Sohan Singh and Shambhu Singh have challenged their conviction under section 304-II IPC and accordingly sentencing them for 5 years' R.I. During the pendency of appeal we are informed that Shambhu Singh has died.

The prosecution story was initiated after an oral report was lodged on 07.10.82 at about 10.50 AM by Pratap Dholi at Police Station Anadra, alleging interalia that he has been informed by Kheta that his son Deva has been belaboured by the four accused persons namely, Heer Singh, Sohan Singh, Ganga Singh and Shambhu Singh. After receiving this information, he went to the field and arranged for taking Deva to the hospital. Firstly he was taken by bullock cart and then by tractor.

On this report, a case under section 307 IPC was registered. However, Deva died in the hospital and the case was converted into one under section 302 IPC. Investigation commenced and, thereafter, charge sheet was filed against all the four accused

persons. All the accused persons were charged under section 302 and 302 /34 IPC. They denied the charges and claimed trail. At the trail, prosecution examined 20 witnesses and exhibited 32 documents. The accused was examined under section 313 Cr.P.C. They denied their implication and exhibited 2 documents in defence.

Discussing the prosecution case, the trial court was of the opinion that the evidence, as has been adduced by the prosecution against the accused , can be categorised into 4 categories-

(1)Dying declaration

(2) eye witnesses

(3)investigation and discovery of the weapon

(4) investigation and discovery of stolen watch.

In the ultimate conclusion, the trail court found that the weapon have not been found to be blood stained. This part of the prosecution story has not been proved, so also the information and recovery of stolen watch was also not considered sufficient to bring home the offence against the accused persons. This left the trial court with 2 different kinds of evidence , one was in the nature of dying declaration. The learned trail court was of the opinion that the

dying declaration, as has been brought by the prosecution on record, does not fulfil the requirement of proper dying declaration. They appeared to be the answers of the deceased on question. At different point of time, different persons have enquired from the deceased and he had given his version. The trial court found that the way on which things have come , on being questioned on record, do not fulfil the requirement of dying declaration and, therefore, on the basis of such dying declaration, conviction is not possible. May be that the same can be used, if at all, for corroborating the prosecution case.

Then the trial court discussed the evidence of the eye witnesses PW/5 Doula and PW/6 Lachhu. Both these eye witnesses are unanimous that the accused who came to cause injuries to the deceased Deva were Shambhu Singh and Sohan Singh, They exclude the name of the accused Ganga Singh and Heer Singh. On the basis of the testimony of these two witnesses the trial court convicted Shambu Singh and Sohan Singh and acquitted the other two accused persons. The trial court has also referred to the statement recorded under section 164 Cr.P.C. of Hazari. The trial court took note of the fact of the post mortem report wherein there were 18 injuries sustained, but it was a rupture of spleen because of which the man died. The remarks of the medical officer were to the

effect of shock and haemorrhage and multiple injuries.

The learned counsel for the appellant criticising the conviction of the accused persons, submitted that the testimony of PW/6 Lachhu is to the effect that the accused Shambhu Singh and Sohan Singh came with sticks and they caused injuries to Deva. One or two beatings with sticks were given while he was standing and 2-4 beatings were given while he fell down. They have excluded the presence of any other witnesses. They have stated that PW/1 Pankhu and PW/2 Kheta came near Deva. In her testimony, PW/6 Lachhu has not stated as to what did they do when they saw the accused inflicting injuries to Deva. The distance could be 400-500 panwras from where she saw the occurrence. Lachhu in her statement has not deposed as to what was the altercation between the accused and the deceased, because the distance was more. She has not only denied to have heard any altercation in between the accused and the deceased, she has not been able to describe the manner of occurrence. She had deposed that PW/1 Pankhu came after about half an hour. Thus, according to the learned counsel, a general statement, as has been given by PW/6 Lachhu ,can be given by anybody who has not seen the occurrence.

Another eye witness is PW/5 Doula. He has stated that on the fateful day he , Heera and Lachhu were collecting Moong in the field of Heer Singh . At that time Deva was driving his cattle from the field. While he reached near the field of Sawa Ghanchi, accused Shambhu Singh and Sohan Singh started beating him by sticks. Both the accused made their escape good with their cattle and the witnesses left the scene of occurrence after they filled up the crop in their cart. He states in his cross examination that he had left Lachhu in the filed and he returned home. He was examined 4-5 days after the incident. His field is 5-6 fields away from the field of Sawa Ghanchi. He is said to have not heard any conversation in between the accused and the deceased. With whose beating Deva fell down, he does not know. He has not described the occurrence in any manner. He was examined 15 days after the occurrence i.e. when his statement was examined under section 164 IPC.

The learned counsel levelled the same criticism against PW/5 Doula which was levelled against PW/6 Lachhu that he gives narration of the incident in general terms. No specific role has been assigned to any accused person. He has not deposed anything about the beginning of the occurrence, whether there was any altercation in between the accused and the deceased is also not deposed. So also it

is not deposed that they at all tried to intervene in between the accused and the deceased. Both the eye witnesses have stated that they could not hear, possibly could not even see the occurrence. The demeanour of these witnesses must have been of the nature where the trail court could observe that they are not the witnesses of truth. The kind of general statement they have made , any person could make such statements who has not seen the incident. The learned counsel for the accused thus emphasised that the prosecution was faced with the difficulty that they had two such witnesses to support their case, who had possibly not seen the occurrence. Thus, words were put in the mouth of the deceased more than one time and the deceased has been said to have repeated the story to the witnesses, which is an attempt on the part of the prosecution. The dying declaration was then created by the prosecution to some how give respectivity to the prosecution because there was hardly any evidence available with the prosecution. In the light of the above, prosecution has miserably failed in substantiating their case.

Per contra, the learned Public Prosecutor submitted that the case is based on the testimony of two eye witnesses. The witnesses have supported the prosecution version as eye witnesses. In the dying declaration the deceased has named all the four accused

persons, therefore , acquittal of the two accused persons Heer Singh and Ganga Singh has been made under misconception and the two accused persons have wrongly been acquitted. The trial court has proceeded in wrong way and conviction of the two accused appellants have wrongly been made under section 304-II because the nature of injuries on the person of the deceased suggest that there could not have been any other intention than to cause the death of the deceased. All the accused were required to be convicted under section 302 IPC

We have heard the learned counsel and have given our thoughtful consideration to the material available on record.

First and foremost question is whether the witnesses PW/5 Doula and PW/6 Lachhu can be relied upon. Their statements if seen in the examination in chief are of general nature. They have not been able to describe the beginning of the story as to how the incident started. They simply said that the accused Shambhu Singh and Sohan Singh came and started causing injuries. Such general statement can always be made by a witness who is not an eye witness of the occurrence. No peculiarity or convincing factor has been brought by any one of the two eye witnesses to signify that they

could be termed as eye witnesses of the occurrence.

The most important aspect is that their names as eye witnesses have not been mentioned in the first information report. The story as given in the first information report is based on the basis of an information received by the first informant Pratap by his grand son Kheta. In the first information report an oral dying declaration has been incorporated. The dying declaration has been excluded by the trail court from consideration. Considering the various aspects which were material in arriving at a just conclusion, the information received by Kheta was on the basis of an information given by one Murga, as per the court statement of Kheta. Murga has not been produced. What information was communicated by Murga to Kheta is not known. Thus, immediately after the occurrence those who had known the incidence have not been produced by the prosecution.

The FIR was filed on the basis of the information to Murga. The two other eye witnesses have not been examined by the police. So much so the statement of Pankhu , i.e. Ex.D/1 police statement , she has not named all the four accused persons. It is not given out by Pankhu who arrived at the scene of occurrence. She has not given any convincing account of the prosecution story. The

eye witnesses do not inspire confidence but for their tenor and the way occurrence has taken place have not been spoken by them.

From the aforesaid discussion, what stands proved is that the two eye witnesses PW/5 Doula and PW/6 Lachhu cannot be termed to be witnesses of occurrence. Thus the 4 points as delineated by the trial court stands defeated and that leaves the prosecution with no reliable evidence on record. In that view of the matter, we are persuaded that the conviction of the accused Sohan Singh and Shambu Singh have wrongly been recorded by the trial court. There was no medical evidence which could be read against them. Therefore, they were entitled to be acquitted.

Shambhu Singh having already died, nothing more is required to be said in his case. Sohan Singh is on bail. His bail bonds stands cancelled as he has been acquitted of all the charges against him. He need not surrender to his bail bonds.

The State appeal against all the four accused persons, against acquittal of two accused persons Heer Singh and Ganga Singh and also for convicting Sohan Singh and Shambhu Singh under section 302 IPC, also deserves to be dismissed because we have not

believed the basic case of the prosecution.

Consequently, the appeal filed by the State is dismissed. The appeal filed by the accused Sohan Singh is accepted and his conviction and sentences are set aside. He is on bail. He need not surrender, his bail bonds are cancelled.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

L.George